Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

HOWARD ROSS,

Petitioner (Plaintiff-Appellant)

v.

Honorable **ROY MOORE** or his successor, in his official capacity as Chief Justice of the Supreme Court of Alabama, Honorable ROBERT BERNARD HARWOOD,Jr. or his successor, in his official capacity as Justice of the Supreme Court of Alabama, Honorable JACQUELYN L.STEWART or her successor, in her official capacity as Justice of the Supreme Court of Alabama, Honorable CHAMP LYONS, JR. or his successor, in his official capacity as Justice of the Supreme Court of Alabama, and Honorable Douglas Johnstone or his successor, in his official capacity as Justice of the Supreme Court of Alabama,

Respondents

On Petition For Writ Of Certiorari To
The United States Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Howard Ross
6620 #D Willow Pointe Dr.
Huntsville Alabama 35806
(256) 721-3810

25 pp

QUESTIONS PRESENTED

1. Does a decision by a state's appellate courts to deny any review of a *pro se* case qualify as a judicial decision within the meaning of the jurisdictional bar of federal district court review of the Rooker-Feldman. doctrine. The right to appeal *pro se* is granted by constitution and statute of the state and *de facto* denial of any access to the appellate was by the requirement of a physical impossibility.

2. When a cause has been dismissed on jurisdictional grounds can the District Court and Court of Appeals further dismiss it for failure to state a claim when the cause requested a proposed remedy for prospective relief, or "any and all relief that may be proper", from state action that violated constitutional and statutory rights without any known state remedy. Does dismissal on jurisdictional grounds preclude any other considerations for dismissal.

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OPINIONS BELOW

The opinion of the Eleventh Circuit of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The order denying rehearing by Eleventh Circuit of the United States Court of Appeals appears at Appendix B.

The opinion of the United States District Court for the Northern District of Alabama Northeastern Division appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided the case was May 30, 2002. A timely petition for rehearing was denied by the United States Court of Appeals on August 19, 2002, and a copy of the order denying rehearing appears at Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. $1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution 14th amendment, Section b1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42 U.S.C. $1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declatory decree was violated or declatory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 28 U.S.C. $1257 : a) Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially setup or claimed under the

Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Federal Rules of Civil Procedure - rule 12(h)(3) : Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Code of Alabama (1975) title 12 chapter 22 section 2: From any final judgement of the circuit court or probate court, an appeal lies to the appropriate appellate court as a matter of right by either **party**, or their personal representatives, within the time and in the manner prescribed by the Alabama Rules of Appellate Procedure.

Alabama Constitution (1901) article 1 section 10: That no person shall be barred from prosecuting or defending before any tribunal in this state **by himself** or counsel, any civil cause to which he is a party

STATEMENT OF THE CASE

The petitioner filed suit in Alabama state court over a real property dispute. Summary judgement was rendered against him without a trial or transcript of a trial. He filed an appeal in the Alabama Court of Civil Appeals of which the majority refused to review the appeal on its merits because they hadn't been provided a transcript (which of course doesn't exist for summary judgements). An opinion was written by the minority, in dissent The petitioner then filed a petition for a Writ of *Certiorari* for review of the case in the Alabama Supreme Court. That petition was denied by the justices of that supreme court who are the present defendants, or their predecessors, and notice given to petitioner on October 27,

1999. The instant action was filed on October 26,2001 in the Northern District of Alabama Northeastern Division as a civil rights complaint for prospective relief without monetary damages against the state appellate court justices in their official capacity for denying a *pro se* appellant due process access to the state court for a meaningful appeal. The relief requested was an order to the justices to issue the *writ* of *certiorari* and review the case, or any and all relief that may be proper (Appendix E). A motion to dismiss (Appendix D) was granted on jurisdictional grounds and failure to state a claim upon which relief can be granted (Appendix C). The Eleventh Circuit affirmed (Appendix A) and denied rehearing (Appendix B).

REASON FOR GRANTING THE WRIT

The decision of the Eleventh Circuit is in conflict with recent decisions of other circuits and related U.S. Supreme court decisions.

On a motion to dismiss, the court must consider all the allegations in the complaint as true. See United States v Gaubert, 111 S.Ct. 1267, 1276 (1991), and in the light most favorable to the plaintiff. See Brower v. County of Inyo, 109 S.Ct. 1378, 1382 (1989). The plaintiff in this cause claims and has stated uncontroverted evidence that as a *pro se* appellant he was denied his constitutional right to an appeal and access to its courts by the appellate courts of Alabama. Congress passed the civil rights act to prevent the states from ignoring the fourteenth amendment - especially for citizens traditionally considered second class. Congress never intended to bar the federal district courts from protecting the fourteenth amendment rights of citizens from all judicial actions of state courts in civil rights cases. When there is any ambiguity in a statute, the Supreme Court has resolved the issue based on Congressional intent. See Patsy v. Board of Regents of State of Fla., 102 S.Ct. 2557, 2560 (1982). In

Mitchum v. Foster, 92 S.Ct. 2151; 407 U.S. 225, 240; 32 L.Ed.2d 705 (1972), the Supreme Court, without having to modify its principles of comity and federalism, ruled that the anti-injunction act did not prevent injunctive relief under $ 1983 actions against state court proceedings, even though the statute itself doesn't include that wording. "It is clear from the legislative debates surrounding the passage of $1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment 'against State action,... whether that action be executive, legislative, or *judicial*.'". Mitchum, at 2162. (Also quoted in Gjellum v. City of Birmingham, Ala. 829 F.2d 1056, 1065 (11th Cir. 1987)) "Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights. As Representative Lowe stated, the " records of the [state] tribunals are searched in vain for evidence of effective redress [of federally secured rights] .... What less than this [the Civil Rights Act of 1871] will afford an adequate remedy? 'The Federal Government cannot serve a writ of mandamus upon State Executives or upon State courts to compel them to protect the rights, privileges and immunities of citizens .... The case has arisen ... when the federal government must resort to its own agencies to carry its own authority into execution. Hence this bill throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired.'" Cong.Globe, 42d Cong., 1st Sess., 374-376 (1871). This view was echoed by Senator Osborn: "If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate .... We are driven by existing facts to provide for the several states in the South what they have been unable to fully provide for themselves; i.e., the full and complete

administration of justice in the courts. And the courts with which we legislate must be the United States courts." *Id.*, at 653. And Representative Perry concluded: "Sheriffs, having eyes to see, see not; judges having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices .... [A]ll the apparatus ands machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice." Id., at App. 78." Mitchum , at 2161. In granting prospective relief in Pulliam v. Allen, 104 S.Ct. 1970 (1984), the court rejected concerns that federal judges would "sit in constant supervision of the of the actions of state judicial officers ...". Pulliam, at 1979. "If the Court were to employ principles of judicial immunity to enhance further the limitations already imposed by principles of comity and federalism on the availability of injunctive relief against a state judge, it would foreclose relief in situations where, in the opinion of a federal judge, that relief is constitutionally required and necessary to prevent irreparable harm. Absent some basis for determining that such a result is compelled, either by principles of judicial immunity, derived from the common law and not explicitly abrogated by Congress, or by Congress' own intent to limit the relief available under $ 1983, we are unwilling to impose those limits ourselves on the remedy Congress provided." Pulliam, at 1979. "Much has changed since the Civil Rights Acts were passed. It no longer is proper to assume that a state court will not act to prevent a federal constitutional deprivation or that a state judge will be implicated in that deprivation. We remain steadfast in our conclusion, nevertheless, that Congress intended $ 1983 to be an independent protection for federal rights and find nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges

completely from federal collateral review." Pulliam, at 1980. In describing the purpose of the civil rights act the court in Monroe v. Pape, 81 S.Ct. 473, 477 (1961) said "The *third* aim was to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice."

In Feldman, the Supreme Court went on to distinguish which state court decisions the District Court had authority to review. It was held that review was barred of final determinations of state courts if they were of proceedings that were judicial in nature. See District of Columbia Court of Appeals v. Feldman, 103 S.Ct.1303,1311 460 U.S.462, 477 75.L.Ed.2d 206. Feldman allows the District Court to review other state court decisions because it held that " the nature of a proceeding "depends not upon the character of the body, but upon the character of the proceedings."" Feldman, at 1312. In characterizing what makes a decision judicial, the court said that "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end ." Feldman, at 1312. That court also pointed out that a decision is judicial if the state court considers the petition on its merits. But if the proceedings were administrative or ministerial the district court has jurisdiction to review the decision. In the present case the state courts refused to review the merits of the appeal because the appellant failed to provide a transcript of a case for which there was no trial or transcript - and therefore a physical impossibility. Setting such a standard for a *pro se* appellant to have his case reviewed is equivalent to a limit on access to the courts and a meaningful appeal for *pro se* appellants only if the court has the time to hear their case. Such decisions amount to a *de facto* rule that makes review of *pro se* appeals discretionary and is therefore administrative and ministerial. Since the Alabama constitution clearly gives *pro se* appellants the right

to appeal, such a decision is administrative and non-judicial and can be reviewed by the District Court. The state appellate court's decision not to make a decision is not a decision within the Rooker-Feldman jurisdictional bar. Since this complaint challenges a different rule made for a *pro se* party it can be heard by the District Court. See Feldman, at 1316. Since the petitioner has other cases pending in the state courts and is sure to appeal some of them *pro se*, he has a personal interest in challenging the rule.

The jurisdiction of a District Court to review a state court decision that in practice denies the right of an appellant to a meaningful appeal has further authority in the consenting Supreme Court justice opinions of Penzoil co. v. Texaco, inc., 107 S.Ct. 1519; 481 U.S. 1; 95 L.Ed 2d 1 (1987). In that case the Texas state court required an eleven billion dollar bond before appeal would be allowed, which was more than the worldwide bond capacity and was a *de facto* denial of the right to appeal. On the appeal the Second Circuit had ruled that all of Texaco's claims were barred except for the claim that enforcement of the state judgement would deny it due process and equal protection by denying its right to a meaningful appeal in state court and therefore the bond requirement was a part of the decision that could be reviewed by the federal district court. See Texaco v. Penzoil, 784 F.2d 1133 (2nd Cir. 1986). While that case was reversed against Texaco by the Supreme Court on other grounds, the consenting justices went on to point out that review by the district court of the decision to require the bond was not barred. "While Texaco cannot, consistent with due process and equal protection be arbitrarily denied the right to as meaningful opportunity to be heard on appeal ... In this case, however, Texaco filed the $1983 action only to protect its federal constitutional right to a meaningful opportunity for appellate review, not to challenge the merits of the Texas

suit. Texaco's federal action seeking a stay of judgement pending appeal is therefore an action "separable from and collateral to" the merits of the state court judgement ... Since Texas has created an appeal as a right from the trial court's judgement, it cannot infringe on this right to appeal in a manner inconsistent with due process or equal protection." Penzoil co., at 1530. "The federal claim is inextricably intertwined with the state court judgement if the federal claim succeeds only to the extent that the state court wrongly decided the issue before it." Penzoil co. v. Texaco, inc., supra. When a state court claims it is impossible to conduct a complete analysis for reasons beyond its control (such as no possibility of a transcript), its holding is without prejudice and has no preclusive effect on federal district court. See Johnson v. DeGandy, 114 S.Ct. 2647, 2653; 512 U.S. 997; 129 L.Ed 2d 775 (1994).

The seventh circuit has already set guidelines for what state court decisions can be reviewed in federal district court. In Nesse v. Shepard, 68 F.3d 1003, 1005 (7th Cir.1995) that court reversed Rooker-Feldman for claims of judicial decisions based on corruption and politics."But if he claims, as he does, that people involved in the decision violated some independent right of his, such as the right to be judged by a tribunal that is uncontaminated by politics, then he can, without being blocked by the Rooker- Feldman doctrine, sue to vindicate that right ... Otherwise there would be no federal remedy for a violation of federal rights whenever the violation so far succeeded in corrupting the state judicial process as to obtain a favorable judgement, as alleged in cases such as *Dennis v. Sparks*, 449 US 24, 101 S.Ct.183, 66 L.Ed. 2d 185 (1980)." Nesse, Supra.

In Gash Associates v. Village of Rosemont, Ill., 995 F.3d 726, 728 (7th Cir.1993) that circuit reversed Rooker-

Feldman for cases where the federal claim won't reverse the state judgement but provides an independent claim related to the state decision. "The Rooker-Feldman doctrine asks is the federal plaintiff seeking to set aside a state judgement, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he is a party? If the former, then the district court lacks jurisdiction; if the latter then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." Gash, Supra.

The ninth circuit has also defined the meaning of "inextricably intertwined" for the application of Rooker-Feldman.. "If no consideration has been given or any decision on the matter is ambiguous, it is unlikely that the issues presented to the state high court and to the federal court are so "inextricably intertwined" that the federal court cannot take jurisdiction." Robinson v. Ariyoshi, 753 F.2d 1468, 1472 (9th Cir. 1985).

The petitioner in this cause is only asking for meaningful access to the Alabama appellate courts instead of just in form. He is not challenging the merits of a state court judgement. Since the federal relief requested asks for that state's review he is not asking for federal relief that will guarantee a favorable response by the state court - the state appeal can still be affirmed. Protecting that access that is granted to all groups by a state constitution is the federal constitution responsibility of the District Court.. "Reasonable access to the courts is such a right, being guaranteed as against state action by the due process clause of the fourteenth amendment." Hatfield v. Balleaux, 290 F.2d 632, 636 (9th Cir. 1961). A state may not act in a way that effectively restricts access to their courts or makes the access arbitrary. See Johnson v. Avery, 89 S.Ct. 747, (1969). Or

deny appellate access by making impossible requests for transcripts. See Griffin v. Illinois, 76 S.Ct. 585 (1956). While the appellant in this civil case can afford, would gladly pay, and is not asking for waiver of the cost of a transcript - none exists for him to produce because there was no trial. While due process is not concerned with the rights of the plaintiff on the merits, it is for the state courts to determine the adjective as well as the substantive law of the State, the federal guarantee is not a mere form. "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it". Richards v. Jefferson County, Ala., 116 S.Ct. 1761 (1996).

In its opinion in this case the Eleventh Circuit refers to two of its prior decisions as they relate to federal court review of state court judgements and decisions. Reynolds v. State of Ga., 640 F.2d 702, 703 (11th Cir. 1981) is inapplicable because the plaintiff in that case was attempting to have the federal court set aside state judgements as null and void and claimed that judgement to be erroneous. In the present case the petitioner is only asking for the prospective relief of an order for the state appellate courts to provide review, has not asked the judgements be voided, nor has he raised any claim that the judgements are in error. Rolleston v. Eldridge, F.2d 163, 165 (11th Cir. 1988) is inapplicable because the plaintiff in that case was claiming monetary damages and procedural errors (which were unfounded) in a state action. In the present case the petitioner asks for no money and is not claiming that there were procedural errors made during trial or appeal - simply that the appeal was not provided. Part of the intention of Congress in limiting district court jurisdiction was to prevent the burden those courts would

have if they had to review every contention of civil procedural errors in state trials.

Since the District Court and the Court of Appeals ruled that they lacked subject matter jurisdiction to review this case they shouldn't have made any ruling to dismiss for failure to state a claim upon which relief can be granted. While we realize that the Alabama constitution does not expressly provide for the right of Supreme Court *certiorari*, it does give *pro se* appellants the right to an appeal without specifying the mechanism. Since Alabama has a dual appellant system, if the lower court denies the review the other must provide that function in order to satisfy its constitutional requirement. While the plaintiff in this case has asked for court order of the *writ* of *certiorari* as the most expedient relief, the district court would have latitude in fashioning alternative relief since the complaint further asks for "Any and all relief that may be proper". The petitioner is not asking for *certiorari* by the state supreme court for the purpose of reviewing an appeals court judgement. He agrees that it would not be required. Rather it is to provide for a single appeal, which is constitutionally required.

NATIONAL IMPORTANCE

This case is of national importance in shaping future law because it defines the role that federal district courts can play in protecting federally guaranteed rights from state court abuse in civil cases without overextending and violating our principles of comity and federalism or overengaging in the day to day functions of the state courts Since the petitioner is not asking review of a state judgement or ruling on procedures, he is not asking the federal judge to do the routine daily work of the state judges. Since this is not a class action, he is not asking for constant review of the Alabama judiciary. The Eleventh Circuit encompasses a region that

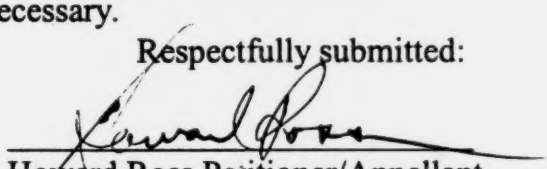
historically has been on the forefront of the debate of the treatment of certain groups of people as second class citizens. The practices of the state courts have been no exception and while certain groups have had their rights vindicated, others have not. *Pro se* parties are in a classification that should attract higher scrutiny when their cases are ignored. In discussion with retired justices the plaintiff has been advised that local judges, in rendering their judgements, do weigh the unspoken fact that decisions against *pro se* parties are highly unlikely to be granted the required review by the appellate unless the party enjoys higher prestige or publicity. In most cases their appeals are simply affirmed with no opinion and no indication given as to the review provided. This petitioner realizes that most of those cases are frivolous and the courts can't possibly give all a response. If any of those plaintiffs were to file a similar complaint as in this case, they could be easily dismissed by summary judgement. But in this case the Alabama Court of Appeals has gone the extra distance and provided evidence, which has not been controverted by the defendants, that the case was not even reviewed by the majority. Since an opinion was written in dissent by the Alabama court, the state case could not have been frivolous and the federal case should not have been dismissed by motion without at least summary proceedings and the submittal of affidavits. Since the plaintiff has other cases pending in state court, he is at an unfair disadvantage to the represented parties in those cases, as do all other *pro se* parties, unless this Court makes some appellate review mandatory and not a meaningless ritual. It's been 15 years since the Texaco case was decided and the Court still hasn't fully resolved the issue of what constitutes a meaningful appeal and when does the federal district court have jurisdiction to intervene - leaving many in the lurch. This case involves property valued far less than 11 billion dollars (unless one takes the view of our local tax assessor)

and is in itself insignificant compared to Texaco. But "Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgement." Oliver Wendell Holmes, in dissent.

CONCLUSION

The federal district court has jurisdiction over denial of access to state court of a *pro se* plaintiff who has other cases pending. The dismissal by the federal district court should be reversed and the cause remanded for further proceedings, with change of venue if necessary.

Respectfully submitted:



Howard Ross Petitioner/Appellant
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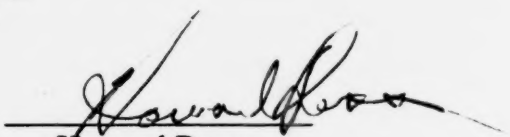
CERTIFICATE OF SERVICE

I hereby certify that I have served counsel of all parties to this appeal on _____, 2002 by placing a copy of the foregoing in their respective mailbox at the Madison County Courthouse, or in the United States mail, first class postage affixed and addressed, as follows:

ALYCE S. ROBERTSON
Office of the Attorney General
11 South Union Street
Montgomery, Al 36130



Howard Ross

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10038
Non-Argument Calendar
D.C. Docket No. 01-02730-CV-S-NE

HOWARD S. ROSS, Plaintiff-Appellant

versus

ROY MOORE, or his successor in his official capacity as Chief Justice of the Supreme Court of Alabama, et al., Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Alabama
(May 30, 2002)

Before TJOFLAT, BIRCH, and BARKETT, Circuit Judges.

PER CURIAM:

Howard Ross, proceeding pro se, appeals the dismissal of his 42 U.S.C. $ 1983 action claiming a deprivation of his Fourteenth Amendment right to due process. Ross has sued, in their official capacities, the Justices of the Supreme Court of Alabama, for their failure to issue a writ of certiorari to review the records of the lower Alabama courts.

We affirm. Federal courts are not designed to serve as additional appellate reviewers of state court judgements. Reynolds v. State of Ga., 640 F.3d 702, 703 (11th Cir.1981). A $ 1983 action is neither an alternative nor a complement to the appeal of a state trial court decision to a higher state court. Rolleston v. Eldridge, 848 F.2d 163, 165 (11th Cir.

1988). The district court correctly dismissed Ross claim for lack of subject matter jurisdiction, as the record clearly indicates that Ross is seeking federal review of a state court decision. Moreover, the district court also correctly dismissed Ross' claim for failing to state a claim, because the denial of a writ of certiorari is not considered to be a deprivation of a constitutional right.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10038-FF
Non-Argument Calendar
D.C. Docket No. 01-02730-CV-S-NE

HOWARD S. ROSS, Plaintiff-Appellant
versus

ROY MOORE, or his successor in
his official capacity as Chief Justice
of the Supreme Court of Alabama, et al.,
Defendants-Appellees

On Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION(s) FOR REHEARINF AND PETITION(s) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, ___F.2d___).

Before TJOFLAT, BIRCH, and BARKETT, Circuit Judges.

PER CURIAM: The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having

requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT: FILED AUG 19 2002
THOMAS K.KAHN
S/ R. Barkkett CLERK
UNITED STATES CIRCUIT JUDGE

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

HOWARD ROSS,
Plaintiff,
vs. Civil Action No.:CV-01-S-2730-NE

ROY MOOREm et al.,
Defendants.

ORDER OF DISMISSAL

This action is before the court on defendants' motion to dismiss (doc.no.6). Upon consideration of the pleadings and defendants' brief in support of the motion to dismiss, the court concludes the motion clearly is due to be granted for all of the reasons stated in defendants' brief, which the court adopts. Accordingly, it is ORDERED that all claims of plaintiff are dismissed with prejudice. Costs are taxed to plaintiff. The clerk is directed to close this file.

DONE this 6th day of December, 2001.

S/Lynwood Smith
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

HOWARD ROSS,
Plaintiff,

v. CV-01-S-2730-NE

ROY MOORE, et al.,
Defendants.

MOTION TO DISMISS

COME NOW, defendants Chief Justice Roy Moore, Justice Robert Bernard Harwood, Justice Jacquelyn Stuart, Justice Champ Lyons, Jr., and Justice Douglas Johnstone, and pursuant to Rule 12(b)(6), Fed. R. Civ. P., move to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted. As ground therefor, defendants state as follows:

Plaintiff has failed to state a claim upon which relief can be granted

Defendants are immune from suit by virtue of judicial Immunity.

Plaintiff's claims are barred by the statute of Limitations.

The Northern District of Alabama is an improper venue.

5. This court is without jurisdiction to hear a challenge to a state court ruling.

In further support of this motion, defendants file their brief contemporaneously herewith.

RESPECTFULLY SUBMITTED,
BILL PRYOR
ATTORNEY GENERAL

S/Alyce S. Robertson
ALYCE S. ROBERTSON
ASSISTANT ATTORNEY GENERAL

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

HOWARD ROSS, Plaintiff

Vs. Civil Action No.

Honorable ROY MOORE or his successor, in his official capacity as Chief Justice of the Supreme Court of Alabama succeeding Perry Hooper, Honorable ROBERT BERNARD HARWOOD, Jr. or his successor, in his official capacity as Justice of the Supreme Court of Alabama succeeding Hugh Maddox, Honorable JACQUELYN L. STUART or her successor, in her official capacity as Justice of the Supreme Court of Alabama succeeding Ralph Cook, Honorable CHAMP LYONS, JR. or his successor, in his official capacity as justice of the Supreme Court of Alabama, and Honorable DOUGLAS JOHNSTONE or his successor, in his official capacity as Justice of the Supreme Court of Alabama,

Defendants.

APPENDIX D/E

CIVIL RIGHTS COMPLAINT FOR PROSPECTIVE RELIEF WITHOUT MONETARY DAMAGES

1. Plaintiff resides at 6620 #D Willow Pointe Drive, Huntsville, Alabama 35806.

2. Defendants are Supreme Court Justices of the State of Alabama and have a mailing address of 300 Dexter Avenue, Montgomery, Alabama 36104.

3. The jurisdiction of this court is invoked pursuant to title 28 United States Code 1331, for original jurisdiction of a civil action arising under the Constitution and statutes of the United States of America, including 42 United States Code 1983 and the Fourteenth Amendment to the Constitution due process clause. This complaint arises from a dispute over real property located in Madison County in northeastern Alabama.

4. Statement of Claim:

a. The Plaintiff filed petition CV97-2006 in Madison County, Alabama Circuit Court for a sale for division of real property located in that county that had been subject to the Alabama statutory right of redemption. An order for summary judgement redeeming the property was granted that vested the title of the Plaintiff in the respondents in that state action but neglected to include any payment of compensation to the Plaintiff for his costs of purchase at the execution sale. Inasmuch as the judgement was summary, a transcript was not produced.

b. The Plaintiff filed a *pro se* appeal of that judgement in the Alabama Court of Civil Appeals of which the majority refused to review the merits and affirmed, no opinion, because the Plaintiff had not provided that appeals court with a transcript (which did not exist). Appeal number 2980199. The only opinion was written in favor of the Plaintiff by the minority in dissent, and as such makes the appeal non-frivolous.

c. After an application for rehearing was denied, the Plaintiff filed a petition in the Alabama Supreme Court for a Writ of *Certiorari* for review of the judgement and appeal. That petition was denied by the Defendants of this case as justices of that Supreme Court and employees of the State of Alabama. The Plaintiff received notice of that denial on October 27, 1999.

d. The Code of Alabama, 1975, Title 12 - 22 - 2 provides as a matter of right an appeal to the appropriate appellate court of any final judgement of the circuit court. The Alabama Constitution, 1901, Article 1 Section 10 provides that no person shall be barred from prosecuting before any tribunal by himself any cause to which he is a party. The State of Alabama has no reasonable relief available to the Plaintiff for this complaint.

e. Plaintiff has paid the full filing fee in this federal case and is not proceeding *in forma pauperis*; nor is he a prisoner; nor has he provided a copy of the state judgement being appealed; nor is he requesting a federal forum for review of that state judgement inasmuch as he is not making any claim in this case that any state court judgement was erroneous or in itself violated his rights.

5. Relief Requested:

a. Plaintiff requests relief under 42 United States Code 1983 from the defendants actions under color of state law denying him the United States Constitution's Fourteenth Amendment provision for due process by denying him a meaningful appeal as provided by Alabama law resulting in the loss of his real property.

b. Plaintiff requests this Court order the Defendants as Justices of the Supreme Court of Alabama to issue the requested Writ of *Certiorari* to the Alabama Court of Civil Appeals so the Defendants can review the records of the lower courts and provide a meaningful appeal by rendering an opinion of the law in that state case, even though no transcript exists. Inasmuch as that review could still affirm the judgement of the lower state court, the federal court is not asked to determine if the state circuit court was wrong.

c. Any and all relief that may be proper.

In the alternative, the plaintiff reasserts the preceding statement of claim and requests the same relief as requested for violation of his right to due process as provided by the United States Constitution Fourteenth Amendment, but not as a violation of his civil rights under 42 United States Code 1983.

Respectfully submitted,

Howard Ross
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APPENDIX E